THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION NO.9786 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The relief sought for in this Writ Petition is to declare the garnishee notices issued by the first respondent, to respondent Nos.5 to 10, for recovery of Rs.6,48,63,859/- payable by the petitioner to the Revenue towards interest under Section 220(2) of the Income Tax Act, 1961 ("the Act" for brevity) as contrary to law, more so as the petitioner's application for grant of waiver of interest is pending before the fourth respondent.

Facts, to the limited extent necessary, are that the petitioner is a society registered under the Societies Registration Act, 1860 and is carrying on charitable activities. For the years 1993-94 and 1995-96, the petitioner was assessed to tax under the Act. The dispute, regarding the petitioner's liability to pay tax for the aforesaid period, ended with the petitioner's appeal being dismissed by the Supreme Court. The petitioner claims to have discharged the entire tax liability for the aforesaid two years, along with interest under Section 234B of the Act. They were, however, subjected to levy of interest under Section 220(2) of the Act.

The petitioner filed an application, to the Director of Income Tax (Exemptions), Hyderabad on 25.07.2011, seeking waiver of the interest payable under Section 220(2) of the Act, highlighting their financial plight. The said application was rejected by the Director of Income Tax (Exemption) by an elaborate order dated 18.07.2012. Thereafter the petitioners filed another application, seeking waiver of interest under Section 220(3) of the Act, to the Director-General of Income Tax (Exemptions), New Delhi. On the ground that the said application was still pending before the fourth respondent and, in the meanwhile garnishee notices were issued to respondent Nos.5 to 10, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Sri A.V. Krishna Koundinya, learned Senior Counsel appearing on behalf of the petitioner, would submit that, as the petitioner's application is still pending consideration before the Director-General of Income Tax (Exemptions), the respondent authorities had acted arbitrarily in issuing garnishee notices to respondent Nos.5 to 10; a direction should be issued to the fourth respondent to consider the petitioner's application within a specified timeframe and, in the interregnum, the garnishee notices should be set aside; the petitioners were clearing the balance due in reasonable instalments; and, if the garnishee notices issued to respondent Nos.5 to 10 were enforced, the petitioners would be unable even to pay the scholarship amounts due to students who belong to the backward sections of society.

Sri J.V. Prasad, learned Senior Standing Counsel for Income Tax, would submit that the remedy, available under Section 220(2) of the Act, is in the alternative; as the petitioner had earlier invoked the jurisdiction of the Director of Income Tax (Exemptions), seeking waiver of interest under Section 220(2) of the Act, they are not entitled to again invoke the jurisdiction of the Director-General in this regard; the interest, which is sought to be recovered from the petitioner, is for belated payment of tax for the assessment years 1993-94 and 1995-96; the department has been extremely indulgent in accommodating the petitioner; and it is only after a lapse of more than 20 years has action been initiated, for recovery of the interest due under Section 220(2) of the Act, by issuing the impugned garnishee notices.

Section 220(2) of the Act stipulates that, if the amount, specified in the notice of demand under Section 156 of the Act, is not paid within the period prescribed under Sub-Section (1), the assessee shall be liable to pay simple interest at one percent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in Sub-Section (1), and ending with the day on which the amount is paid. Section 220(2A) of the Act stipulates that, notwithstanding anything contained in Sub-Section (2), the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may reduce or waive the amount of interest, paid or payable by an assessee under the said Sub-Section, if he is satisfied that (i) payment of such amount has caused or would cause genuine hardship to the assessee, (ii) default in payment of the amount, on which interest has been paid or was payable under the said Sub-Section, was due to circumstances beyond the control of the assessee, and (iii) the assessee has co-operated in an inquiry relating to the assessment, or any proceeding for the recovery of any amount due from him.

The remedy provided under Section 220(2A) of the Act is to seek waiver of the interest due, under Section 220(2) of the Act, by way of an application either to the Principle Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner of Income-Tax. The petitioner was entitled to file an application, seeking waiver of interest, to any one of the aforesaid offaicers of the Income-Tax Department. The petitioner chose to invoke the jurisdiction of the Director of Income-tax (Exemptions) by way of an application under Section 220(2A) of the Act, and it is only after the said application was rejected by order dated 18.07.2012, have they chosen to make a similar application to the fourth respondent. As is evident from the provisions referred to hereinabove, the fourth respondent does not sit in appeal over the decision of the Director of Income Tax (Exemptions) refusing to waive the interest payable under Section 220(2) of the Act. While the petitioner could have filed an application to the Director- General of Income-tax (Exemptions) in the first instance, such a remedy was available to them only if they had not invoked the jurisdiction of the Director of Income Tax (Exemptions) earlier. Having suffered an adverse order from him, it was not open to the petitioner to have filed another application, seeking waiver of interest under Section 220(2) of the Act, before the fourth respondent, nor does not it justify a Writ of Mandamus being issued as no statutory obligation has been cast on the fourth respondent to consider the petitioner's application after a similar request has already been rejected by the Director of Income Tax (Exemptions). We find no illegality in the action of the respondents in seeking to recover the interest amount, due from the petitioner, by issuing garnishee notices to respondent Nos.5 to 10.

We, however, find some force in the submission of Sri A.V.Krishna Koundinya, learned Senior Counsel appearing on behalf of the petitioner, that the petitioner is a charitable organisation, and the garnishee notices issued to respondent Nos.5 to 10 would disable them from paying even scholarship to the students who belong to the Backward Section of Society. While no mandamus can be issued to the respondents to waive interest, or to lift the orders of attachment, we hope and trust that the Income-tax department would consider any request made by the petitioner for grant of breathing time to repay the amount due towards interest under Section 220(2) of the Act. We have no reason to doubt that, on an application being made by the petitioner in this regard, the third respondent shall consider whether the petitioners can be granted some accommodation in the time frame within which they should repay arrears of the interest due, under Section 220(2) of the Act, to the department.

Subject to the observations afore-mentioned, the Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(SURESH KUMAR KAIT, J)

13th April 2016

RRB